

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Cease and Desist
Order Issued to Accurate Home Loans,
Inc., d/b/a Accurate Home Loans

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

Mortgage Originator Lic. No. 20352662

This matter came on for hearing before Administrative Law Judge Manuel J. Cervantes at 9:30 a.m. on March 15, 2011, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The OAH record closed at the conclusion of the hearing. The parties agreed to extend the recommendation due date until April 4, 2011.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Errol Appel, owner of Accurate Home Loans (AHL or Respondent) appeared on his own behalf without counsel. Julie Appel also appeared.

STATEMENT OF ISSUE

Should the Cease and Desist Order issued against Accurate Home Loans for failure to pay an assessment required by Minn. Stat. §§ 45.027, subd. 7 (a)(2), and 58.12, subd. 1 (b)(2)(x), and 2010 Minn. Laws, ch. 215, art. 4, § 10, be modified, vacated, or made permanent?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Accurate Home Loans, Inc., is a residential mortgage origination company owned and operated by Errol and Julie Appel. The company has been licensed in the State of Minnesota under Minnesota Statutes, Chapter 58, since 2002. Mr. Appel is the only individual in the company who performs mortgage loan origination. The Appels operate the business out of their home in Shakopee, Minnesota.¹

¹ Testimony of Julie Appel.

2. In July of 2008, the federal government enacted a law that required the states to license individuals engaging in mortgage loan origination. Prior to this change, federal and state law required only that companies engaging in mortgage loan origination be licensed.²

3. In 2010, based on the change in federal law, the Minnesota Legislature enacted Minnesota Statutes, Chapter 58A, the “Minnesota Secure and Fair Enforcement for Mortgage Licensing Act of 2010” (S.A.F.E. Act).³ Effective July 31, 2010, the law requires the licensure of individuals engaged in mortgage loan origination in Minnesota.⁴

4. To aid with the transition to licensing individual mortgage loan originators in addition to mortgage loan origination companies, and to conform with federal law and Chapter 58 of the Minnesota Statutes, the Legislature extended the expiration date of mortgage loan origination companies’ licenses from July 31, 2011, to December 31, 2011, if licensees paid a prorated transition fee of \$200 by December 31, 2010.⁵

5. The S.A.F.E. Act requires all individual mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry (NMLS).⁶ To implement and administer this new requirement and to participate in the NMLS, the Department paid \$272,000 from its budget to the Conference of State Bank Supervisors (CSBS).⁷

6. The Legislature permitted the Commissioner of Commerce to recover the costs paid to CSBS by levying a pro rata assessment on Minnesota mortgage loan origination companies. The law states as follows:

The commissioner shall levy the assessments and notify each institution of the amount of the assessment being levied by September 30, 2010. The institution shall pay the assessment to the department no later than November 30, 2010. If an institution fails to pay its assessment by this date, its license may be suspended by the commissioner until it is paid in full.⁸

7. By memo dated August 30, 2010, the Department notified all licensed residential mortgage originator and servicer companies of the change in the law.⁹ The Department explained that the transition to NMLS would begin on October 1, 2010, and that all individual mortgage loan originators were required to meet several requirements before a license would be issued to the individual. The memo gave website and contact information for both NMLS and the Department. The Department informed licensees

² 12 U.S.C. 5101-5116; Testimony of Robin Brown.

³ Ex. 1 (Laws of Minnesota 2010, ch. 347, art. 4.)

⁴ Ex. 1 (Laws of Minnesota 2010, ch. 347, art. 4, § 3, codified at Minn. Stat. § 58A.03, subd. 1.)

⁵ Ex. 1 (Laws of Minnesota 2010, ch. 347, art. 5, § 7).

⁶ Ex. 1 (Laws of Minnesota 2010, ch. 347, art. 4, § 11, codified at Minn. Stat. § 58A.10.)

⁷ Test. of R. Brown.

⁸ Ex. 2 (Laws of Minnesota 2010, ch. 215, art. 4, § 10).

⁹ Ex. 3.

that they would be required to pay a one-time assessment to the Department by November 30, 2010, to cover the costs of joining NMLS. At that time, the Department estimated that each licensed company would be required to pay between \$600 and \$800. The memo stated that any "licensee who fails to pay the assessment by the due date may have their license suspended until the fee is paid in full."¹⁰ The memo also stated:

Mortgage originator companies that have ceased to do business in 2010, or who plan to discontinue operations, must contact the DOC in writing with a letter of intent to surrender their license. Originators must submit a plan for the withdrawal from operations, including a timetable for dissolution of the business.¹¹

8. The Appels received this memo and made phone calls to the Department in an attempt to better understand the new law. They were confused by how the S.A.F.E. Act affected them since Mr. Appel was the only mortgage loan originator working for the company.¹²

9. On September 30, 2010, the Department sent a \$600 invoice to Accurate Home Loans for its share of the Department's costs of joining NMLS.¹³ The Department reiterated some of the language from the August 30, 2010, memo about the new S.A.F.E. Act and explained that all mortgage loan originator companies were being assessed the same amount. The Department stated that if AHL did not make its payment by November 30, 2010, its license may be suspended by the Commissioner until the assessment was paid in full. The Department sent this invoice to more than 500 Minnesota companies.¹⁴

10. Upon receiving the September 30, 2010, memo, the Appels made additional phone calls to the Department in an attempt to understand how the new law applied to their business.¹⁵

11. The Department also posted information on its website regarding the new licensing requirements in the S.A.F.E. Act and the one-time assessment fee.¹⁶

12. The Department sent out a three-page reminder memo to all licensees detailing the new licensing requirements and the \$600 assessment fee on October 26, 2010.¹⁷ The Appels deny receiving this particular memo.¹⁸

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² Test. of J. Appel.

¹³ Ex. 4.

¹⁴ Test. of R. Brown.

¹⁵ Test. of J. Appel.

¹⁶ Exs. 7 and 8.

¹⁷ Ex. 5.

¹⁸ Test. of J. Appel.

13. On November 30, 2010, Accurate Home Loans paid the \$200 transition fee and a \$200 NMLS processing fee.¹⁹

14. By memo to all licensed residential mortgage originators dated December 9, 2010, the Department expressed concern that companies and individuals engaging in mortgage loan origination would not complete the new licensing requirements by December 31, 2010, and therefore, would not be able to continue working in the industry as of January 1, 2011.²⁰ The memo explained that transition requests had to be approved by December 31, 2010, and that such requests could not be approved until the company has submitted a new surety bond and paid the \$600 assessment fee. Again, the Department stated that it could suspend a company's license for failure to pay the \$600 assessment.²¹

15. At no time after receiving any of these memos did the Appels submit anything in writing to the Department. The Appels spoke to staff members at the Department on numerous occasions between August 2010 and March 2011.²²

16. As of January 2011, Accurate Home Loans had not paid the \$600 assessment fee to the Department. As a result, on January 21, 2011, the Department issued a Cease and Desist Order and Notice of Right to Hearing (Order) to Accurate Home Loans. The Order required AHL to stop acting as a licensed residential mortgage originator in Minnesota until it paid the \$600 assessment to the Department. The Order also notified AHL that it could request a hearing within 30 days.²³

17. The Cease and Desist Order is the only negative action taken by the Department against Accurate Home Loans since the company was licensed in 2002.²⁴

18. The Department issued approximately 100 Cease and Desist Orders to residential mortgage originators due to nonpayment of the \$600 assessment. Some of the licensees have since paid the \$600 assessment, and others have surrendered their licenses. In each instance, the Department did not vacate the Cease and Desist Order against the license.²⁵

19. On February 18, 2011, the Appels requested an administrative hearing to appeal the Cease and Desist Order. The Appels specifically requested that the hearing occur after March 10, 2011.²⁶

20. On March 1, 2011, the Department issued a Notice and Order for Hearing in this matter, setting the hearing for March 15, 2011.

¹⁹ Ex. B.

²⁰ Ex. 6.

²¹ *Id.* at 2.

²² Test. of J. Appel and Errol Appel.

²³ See, Cease and Desist Order and Notice of Right to Hearing attached to the Notice and Order for Hearing (March 1, 2011).

²⁴ Test. of R. Brown; Test. of J. Appel.

²⁵ Test. of R. Brown.

²⁶ See attachment to the Notice and Order for Hearing dated March 1, 2011.

21. In an email to the Department dated March 14, 2011, Mr. Appel submitted documentation indicating that Accurate Home Loans was no longer engaging in residential mortgage loan origination in Minnesota as of December 2010. He surrendered the license and asked that AHL be removed from the Active Rolls and the Cease and Desist List. The Appels also requested that the hearing scheduled for the next day be canceled.²⁷

22. Later that same day, the Department clarified with the Appels that the Cease and Desist Order would not be vacated based upon the surrender of the license. Based on this information, the Appels decided to proceed with the hearing scheduled for March 15, 2011.²⁸

23. Mr. Appel has completed some of the requirements for individual licensure. Within the next two months, the Appels plan to move out of state and retire from the residential home mortgage business.²⁹

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider this matter under Minn. Stat. §§ 14.50, and 45.027, subd. 5a (b).

2. The Respondent received due, proper, and timely notice of the charges against it, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. The Commissioner is authorized to levy a pro rata assessment on institutions licensed under Minnesota Statutes, Chapter 58, to recover the costs to the Department for administering the licensing and registration requirements of Minn. Stat. § 58A.10. The levy was required to be issued by September 30, 2010, and payment was due from licensees by November 30, 2010.³⁰

5. The Department issued the levy to Respondent for the \$600 assessment in a timely manner. To date, Respondent has not paid the \$600 assessment fee.

²⁷ Ex. 9. See also, Ex. A.

²⁸ Ex. 10.

²⁹ Ex. A. Test. of J. Appel and E. Appel.

³⁰ Ex. 2 (Laws of Minnesota 2010, ch. 215, art. 4, § 10).

6. The Commissioner of Commerce may take action against the license of a residential mortgage originator who fails to pay any fee or assessment imposed by the Commissioner.³¹

7. The Commissioner may take action against any person who violates any laws, rules, or orders related to the duties entrusted to the Commissioner, including issuing a Cease and Desist Order against the person's license.³² A Cease and Desist Order issued under Minn. Stat. § 45.027, subd. 5a, remains in effect until it is modified or vacated by the Commissioner.³³

8. The Department properly issued a Cease and Desist Order against Respondent for nonpayment of the \$600 assessment fee.

9. Affirmation of the Cease and Desist Order is in the public interest.

10. The conclusions are reached for the reasons set forth in the attached Memorandum, which is incorporated herein by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED: that the Commissioner of the Department of Commerce AFFIRM and make permanent the Cease and Desist Order issued against Accurate Home Loans, Inc.

Dated: March 31, 2011.

s/Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been

³¹ Minn. Stat. § 58.12, subd. 1 (b)(2)(x).

³² Ex. 11 (Minn. Stat. § 45.027, subds. 5a and 7 (a)(2)).

³³ Ex. 11 (Minn. Stat. § 45.027, subd. 5a (d)).

available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Within 15 days after receiving this Report, the Commissioner shall issue a further order vacating or making permanent the cease and desist order. Parties should contact Michael Rothman, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, 651-296-6025, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. To comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Mr. and Mrs. Appel operate Accurate Home Loans out of their home. They are the sole employees of the business. Beginning in August 2010, when the Appels received notice from the Department of the new S.A.F.E. Act and its requirements, they were confused about how the new law applied to their business. The Appels made several phone calls to the Department for help in interpreting the new law. They claim that they could not get a straight answer from anyone at the Department. Nonetheless, Mr. Appel began to work toward completing the new requirements for his individual licensure. He experienced a setback when he had two emergency surgeries. After the surgeries, Mr. Appel proceeded to take the required state and federal licensure exams. He passed the state exam only.

Because Mr. Appel was the only mortgage loan originator in the company and he had not yet met the individual requirements for licensure, the Appels believed they did not need to pay the \$600 assessment fee levied against Accurate Home Loans until Mr. Appel was compliant with the new law. In addition, the Appels were contemplating retirement and were considering surrendering the Accurate Home Loans license and closing the business. The Appels claim that they would have surrendered the license well before the Cease and Desist Order was issued if the Department had given them better information in a timely manner.

The Appels are requesting that the Cease and Desist Order be vacated. While they plan to retire and move out of state, they wish to hold open the option of being

licensed again in the future. The Appels argue that a Cease and Desist Order in their licensing history will prevent them from being able to do business with lenders in the future.

The Department argues that once a licensee complies with the terms of a Cease and Desist Order, the Order no longer has regulatory force. Department policy dictates that Cease and Desist Orders are not vacated, even if complied with. The Order simply remains a part of a licensee's enforcement history. According to the Department, Accurate Home Loans is seeking special treatment by asking to have the Cease and Desist Order vacated.

While the new S.A.F.E. Act and its requirements may have seemed overwhelming to the Appels as the owners of a small business, the written information sent to Accurate Home Loans by the Department was clear. Failure to pay the \$600 assessment fee could result in suspension of the company's license. The Appels acknowledged receiving all but one of these notices. Nothing in these notices from the Department excused a company from payment of the \$600 assessment pending individual licensure.

Accurate Home Loans was a licensed mortgage loan origination company at the time the Department levied the \$600 assessment as permitted by the Legislature. The company did not pay the fee or surrender its license in a timely manner. Accordingly, there is no basis to vacate the Cease and Desist Order. Nothing in the terms of the Cease and Desist Order prevents the Appels from becoming licensed in the future, should they choose to do so. For all of these reasons, the Administrative Law Judge recommends that the Commissioner affirm and make permanent the Cease and Desist Order issued to Accurate Home Loans.

M. J. C.